

**TESTIMONY OF BRUCE N. SHIBLES, ESQ.
IN OPPOSITION TO SECTION 4 OF SB 13-052
APRIL 17, 2013**

MADAME CHAIR, MEMBERS OF THE JUDICIARY COMMITTEE, GOOD AFTERNOON.

MY NAME IS BRUCE N. SHIBLES. I'M AN ATTORNEY WITH HUNTER & ASSOCIATES. DURING THE PAST 5 YEARS, MY CONSTRUCTION DEFECT PRACTICE HAS CONSISTED ENTIRELY OF DEFENDING COLORADO SUBCONTRACTORS. SOME OF MY CLIENTS INCLUDE PLUMBERS, ROUGH GRADERS, LANDSCAPERS, AND CONCRETE FLAT WORKERS, ALL OF WHOM OPERATE SMALL BUSINESSES AND HAVE WORKED ON VARIOUS RESIDENTIAL CONSTRUCTION PROJECTS THROUGHOUT COLORADO.

I AM OPPOSED TO SECTION 4 OF SENATE BILL 13-052. SECTION 4 WOULD REMOVE THE BRIGHT LINE DEFENSE CURRENTLY AVAILABLE TO ALL COLORADO SUBCONTRACTORS IN CONSTRUCTION DEFECT ACTIONS PROVIDED BY THE 6-YEAR STATUTE OF REPOSE. THE LEGISLATURE HAS REPEATEDLY DETERMINED THAT THE STATUTE OF REPOSE IS NECESSARY AND ESSENTIAL TO STREAMLINE CONSTRUCTION DEFECT LITIGATION, BUT ENACTMENT OF SECTION 4 WILL REVERSE THOSE PAST EFFORTS AND LEAD TO UNNECESSARY DEFENSE BURDENS AND UNFAIR RESULTS FOR COLORADO SUBCONTRACTORS.

TWO RECENT WELL-REASONED DECISIONS OF THE COLORADO COURT OF APPEALS – THERMO DEVELOPMENT, INC. ET AL. V. CENTRAL MASONRY CORP. ET AL., 195 P.3D 1166 (COLO.APP. 2008) AND SHAW CONSTRUCTION, LLC V. UNITED BUILDER SERVICES, INC. ET AL., 296 P.3D 145 (COLO.APP. 2012) CERT. DENIED BY THE COLORADO SUPREME COURT, JANUARY 7, 2013, 2013 WL 119979 (COLO. 2013) REAFFIRMED THE ABILITY OF SUBCONTRACTORS TO DEFEND CONSTRUCTION DEFECT ACTIONS USING THE STATUTE OF REPOSE. BOTH OF THOSE CASES WENT AGAINST BUILDERS WHO HAD ATTEMPTED TO PASS THROUGH CONSTRUCTION DEFECT ALLEGATIONS TO THEIR SUBCONTRACTORS AND SECTION 4 HAS BEEN WRITTEN TO UNFAIRLY AND UNJUSTLY REMOVE THE STATUTE OF REPOSE DEFENSE FOR COLORADO SUBCONTRACTORS.

THERE IS SIMPLY NO NEED OR REASON TO SUBJECT COLORADO SUBCONTRACTORS TO STALE LITIGATION CLAIMS AND THE LONG TAIL OF LIABILITY BY REMOVING A SUBCONTRACTOR'S STATUTE OF REPOSE DEFENSE. ENACTMENT OF SECTION 4 WOULD ALLOW CONSTRUCTION DEFECT CLAIMS TO BE BROUGHT AGAINST SUBCONTRACTORS AS LONG AS 10 – 15 YEARS AFTER A SUBCONTRACTOR HAS FINISHED ITS WORK ON A PARTICULAR PROJECT.

FOR EXAMPLE, A ROUGH GRADER COULD COMPLETE ALL OF ITS GRADING WORK 2 YEARS BEFORE ISSUANCE OF A CERTIFICATE OF OCCUPANCY. THE

HOMEOWNER DISCOVERS AN ALLEGED GRADING DEFECT 6 YEARS LATER. A LAWSUIT IS FILED AGAINST THE BUILDER 2 YEARS AFTERWARDS. THAT LAWSUIT IS LITIGATED FOR 2 OR 3 MORE YEARS UNTIL IT IS RESOLVED; AT WHICH TIME THE BUILDER USES SECTION 4 TO SUE THE ROUGH GRADER WITHIN 90 DAYS.

DURING THE 13 YEARS SINCE IT COMPLETED ITS WORK, THE ROUGH GRADER'S RECORDS ARE LOST OR DESTROYED, MEMORIES OF CONSTRUCTION ACTIVITIES ARE DIMMED OR FORGOTTEN, WITNESSES ARE UNAVAILABLE, INSURANCE MAY HAVE BEEN CANCELED, OR PHYSICAL EVIDENCE IS DESTROYED BECAUSE THE ORIGINAL AS-CONSTRUCTED CONDITIONS ARE ALTERED WITH NO OPPORTUNITY FOR THE ROUGH GRADER'S ATTORNEYS OR EXPERTS TO INVESTIGATE THE ALLEGED DEFECTS. THIS TYPE OF UNFAIR ADVANTAGE GOES AGAINST THE FUNDAMENTAL TENETS OF DUE PROCESS AND WILL LEAD TO INHERENTLY UNFAIR AND UNJUST RESULTS FOR COLORADO SUBCONTRACTORS.

AND WITH INSURANCE COMPANIES BEING SUBJECTED TO CARRYING RISK SO MUCH FARTHER INTO THE FUTURE, THEY'LL BE LESS LIKELY TO ISSUE NEW POLICIES TO SUBCONTRACTORS. ALL OF THIS WILL ADVERSELY IMPACT THE ABILITY OF COLORADO SUBCONTRACTORS TO DO BUSINESS.

NOTHING IN CURRENT CONSTRUCTION DEFECT LAW PREVENTS A BUILDER FROM BEING ABLE TO QUICKLY DETERMINE WHICH OF THE ALLEGED CONSTRUCTION

DEFECTS TRULY NEED TO BE DEFENDED. AT THAT POINT, THE BUILDER CAN MAKE THE DETERMINATION WHICH SUBCONTRACTORS THEY WISH TO PURSUE CLAIMS AGAINST, ALL OF WHICH CAN HAPPEN WELL BEFORE ANY SUCH ACTION AGAINST THE SUBCONTRACTOR IS BARRED BY THE CURRENT STATUTE OF REPOSE.

ENACTMENT OF SECTION 4 WILL DISCOURAGE TIMELY RESOLUTION OF CONSTRUCTION DEFECT CASES AND WILL IMPOSE UNFAIR DEFENSE BURDENS AND UNJUST RESULTS ON COLORADO SUBCONTRACTORS.

FOR THESE REASONS, I RESPECTFULLY URGE YOU TO REMOVE SECTION 4 FROM SENATE BILL 13-052 SO THAT COLORADO RETAINS THE CURRENT STATUTE OF REPOSE FOR SUBCONTRACTORS.